

REMARKS

In order to provide adequate coverage for applicant's contribution to the art, new claim 28 has been added. Claim 28 recites a method for interactive audience participation at a live spectator event attended by a plurality of spectators using wireless interactive devices. The method comprises the steps of: (i) querying the spectators, wherein answers to the querying may be entered by those spectators via the user interface of the wireless interactive device; (ii) transmitting the answers to a central processor; (iii) storing the answers as spectator data; (iv) processing the spectator data into results; (v) storing the results of the processing of the spectator data; and (vi) broadcasting the results of the processing of the spectator data. Spectators at the live spectator event having a wireless interactive device and who elect to participate by responding to queries promulgated, e.g. by messages displayed either on their interactive devices or on large scoreboards, displays, monitors, or the like situated in the live event venue are afforded increased entertainment and enjoyment of the live event.

Support for newly presented claim 28 is found in the specification, e.g. at page 3, line 21 to page 4, line 4; page 7, lines 4-5 and 15-16; and page 8, lines 5-8. Consequently, no new matter has been added by the addition of claim 28.

The present invention provides a method and system for audience members in attendance at a live spectator event, e.g. a sporting or other event at which a large number of patrons are gathered within a venue to witness and enjoy in real time a form of entertainment. Persons at this live event desirous of participating in the present method employ an interactive device, preferably a wireless device, to receive queries and respond thereto. The responses of the fans at the live venue are collected and analyzed, and the

results presented to the fans. Preferably the system comprises the dissemination of advertising and promotional material, along with other forms of information that are useful and informative for the participants.

A live spectator event, held at a venue appointed for the gathering of large numbers of persons, provides a level of excitement induced by the collective participation by members of a crowd whose size is frequently measured in the thousands and, in some cases, may be over a hundred thousand fans. The live experience has particular characteristics and a level of excitement difficult to replicate for an individual person or a small number of persons watching a television broadcast, for example. The use of the present system markedly enhances the crowd excitement and experience of attending a major event, such as a professional sports match. Such an advantage is not realized by implementation of any system disclosed or suggested by any combination of the cited references.

The practice of the present invention affords a valuable business opportunity for potential advertisers and purveyors of goods or services, especially those thematically related to the live event. In the unique environment of a major event, e.g. a sporting event and especially a playoff or championship event, fans are highly likely to be caught up in the atmosphere of the moment and develop a positive association between the goods or services advertised and their memories of the live event. The fans are thereby more easily induced to purchase the proffered items. On the other hand, persons remotely located or merely watching a broadcast of an event with a few friends are subject to distractions that compete for their attention to a far greater extent. As a result, advertisers are likely to regard such persons as less attractive prospects and less likely to be induced to purchase the advertisers' goods or services.

Claims 1-10 and 15-23 were rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent 6,193,610 to Junkin.

Independent claims 1 and 15 of the present application relate to a method for interactive audience participation at a live event attended by a plurality of spectators. According to the method, spectators at the live event are provided with an interactive device, wherein the interactive device presents a promotional message and wherein the interactive device includes a user interface. Audio programming is broadcast to the spectator through the interactive device. The spectators are queried, wherein answers to the querying may be entered by spectators via the user interface of the interactive device. The answers are transmitted to a central processor. In addition, the answers are stored as spectator data, which are processed into results. The results of the processing of the spectator data are stored and broadcasted.

Junkin discloses an interactive apparatus and method that allows participants to compete in an interactive game, such as a contest or sporting event. The event with which the participant may interact is broadcast live or previously taped but not aired. At home, participants can play along with the broadcast on a real time basis as a previously taped segment of the television show is aired. Interactive play may be accomplished by access to an on-line version of the game while the corresponding game show airs live or is rebroadcast to the participant for the first time on television. See Abstract, lines 1-11.

It is respectfully submitted that Junkin does not teach or disclose the invention recited by present claims 1 and 15. For example, Junkin does not teach or disclose providing spectators at a live spectator event with an interactive device. In one aspect,

the present invention provides a method for interactive audience participation at a live spectator event, thus enabling the spectator to enhance the experience of the live event.

By way of contrast, the sole objective of Junkin seems to be to provide interactivity for the viewer of a television program at home, i.e., a person not physically present at the live event. More specifically, it is the stated objective of Junkin to enable "at home viewers" to become "at home viewers/players" that are "able to participate as a contestant on the game show or in a contest or game created around an individual sporting event or series of sporting events while it is aired on television" (col. 1, lines 47-51, emphases added). Significantly, the Junkin patent is entitled "Interactive Television System and Methodology." The terms "at home viewer(s)" or "at home viewer/participant(s)" are expressly used at least 35 times in the Junkin disclosure to characterize the participants in the Junkin system and method. The term "viewer," implicitly referring to a person located at home, i.e. not at a live event venue, and watching a television screen representation of an event and concurrently participating in the Junkin system, is found numerous additional times. Moreover, applicant is unable to locate even a single citation in Junkin that would suggest the physical, actual presence of a Junkin system participant at a live event, and the Examiner has not pointed to any evidence that substantiates such a reading. None of the embodiments of Junkin teach or disclose a system and method that may be employed at a live spectator event, since Junkin employs the television set of the at home viewer to provide the viewer with the interactive content. Applicant maintains that Junkin thus teaches away from any method practiced by participating spectators at a live event.

Accordingly, applicant respectfully maintains that Junkin fails to disclose or suggest, either expressly or implicitly, every feature of claims 1 and 15, precluding any

rejection of those claims under 35 USC 102(e). In particular, Junkin fails to disclose or suggest any method wherein spectators physically present at the live event participate interactively, as required by claims 1 and 15, so that the required *prima facie* anticipation has not been established.

Furthermore, applicant maintains that other limitations to independent claims 1 and 15, as recited by the dependent claims 2-10 and 16-23, are also not anticipated by Junkin.

With respect to claim 2, the Examiner alleges that the step of awarding prizes to at least one spectator is disclosed at col. 11, lines 1-11. Applicant respectfully disagrees, pointing out that any participant to whom prizes are awarded in accordance with such teaching is not a participant physically present at a live spectator event.

With respect to claims 3 and 4, Junkin is said to disclose querying and transmitting using wireless communication. However, the interactive device to which transmission is made is not an interactive device used by a participating spectator at a live spectator event as required by claim 1, on which claims 3 and 4 depend.

With respect to claims 5, 7, 8, 16, 18, and 19, Junkin is said at col. 8, lines 37-39, to teach broadcasting using a large screen display. However, the Junkin display is inherently located at the viewer's home, i.e. the venue in which the participant in the Junkin method practices the method. The screen is inherently not located at the live event venue, which it must be to be viewable by a participant at the live event venue, in accordance with claims 5, 7, 8, 16, 18, and 19.

Regarding claims 6, 9, 17, and 20, Junkin is said to disclose broadcasting using the interactive device (col. 8, lines 16-19 and lines 58-62). With respect to claim 10, Junkin is said to disclose broadcasting results using wireless transmission of data from the central processor to the interactive device. Again, such an interactive device inherently

is not disclosed as being used by a spectator at a live event, as required by claims 1 and 15, on which claims 6, 9, and 10; and 17 and 20 depend, respectively.

With respect to claim 21, the Examiner has pointed to col. 8, lines 49-52 and 37-62, as purportedly teaching an audio receiving circuit for receiving an audio signal at a predetermined frequency and furnishing audible programming to the spectators. As explicated hereinabove, applicant respectfully maintains that the Junkin spectators are inherently not present at a live event, and therefore do not use an interactive device at a live event venue, as required by claim 15, on which claim 21 depends. The same deficiency further applies to the rejections of claims 22 and 23.

In view of the foregoing remarks, it is submitted that the present invention, as recited by claims 1-10 and 15-23, is not anticipated by Junkin.

Accordingly, reconsideration of the rejection of claims 1-10 and 15-23 under 35 U.S.C. 102(e) as being anticipated by Junkin is respectfully requested.

Claims 11-14 and 24-27 were rejected under 35 U.S.C. 103(a) over Junkin in view of US Patent 5,916,024 to Von Kohorn, which discloses a system and method for evaluating responses to broadcast programs, such as television programs. The system includes an instructional signal modulated onto a signal transmitted concurrently with the television program, or time-multiplexed with the television signal. See Abstract, lines 1-5. Thus, members of a home audience, such as viewers of a televised video game or quiz show, may receive two broadcasted signals. The first signal is the broadcast signal itself, which may be broadcast from a radio or television station to the listening or viewing audience (col. 3, lines 8-11). The second signal is a signal setting forth a task, such as

answering one or more questions that may be viewed on a television screen and/or listened to over the radio or the audio portion of the television transmission.

To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Applicant maintains that neither Von Kohorn nor Junkin disclose, teach or suggest, either separately or in combination, all of the claim limitations recited in independent claims 11 and 24. As stated above, applicant respectfully maintains that neither Von Kohorn nor Junkin disclose, teach or suggest, either separately or in combination, a user interface of an interactive device that is configured to be employed by a spectator at a live spectator event.

Like Junkin, the sole objective of Von Kohorn seems to be to provide interactivity for a person who is viewing or listening to a television or radio program at home. More specifically, Von Kohorn provides an interactive device for the viewer/listener of a broadcasted program. None of the embodiments of Von Kohorn suggests or discloses a system or method that may be employed at a live spectator event. A person using the

interactive device of Von Kohorn is clearly not a spectator attending a live spectator event within a venue. Instead Von Kohorn discloses the use of broadcasted signals of the program to provide the at-home viewer with additional signals having certain interactive content.

Accordingly, it is submitted that Von Kohorn does not cure the deficiency of Junkin. Whether taken singly or in combination, the Junkin and Von Kohorn references do not disclose or suggest any handheld interactive device for enabling interactive participation by spectators attending a live spectator event within a venue, as recited by present independent claims 11 and 24, or by claims 12-14 and 25-27 dependent thereon, respectively.

In view of the foregoing remarks, it is respectfully submitted that the hand-held device delineated by claims 11-14 and 24-27 is not disclosed or suggested by the combination of Junkin and Von Kohorn.

Accordingly, reconsideration of the rejection of claims 11-14 and 24-27 under 35 U.S.C. 103(a) as being obvious over Junkin and Von Kohorn is respectfully requested.

Claims 1-21, 23, 24, and 27 were rejected under the judicially-created doctrine of obviousness-type double patenting over claims 1-12 of U.S. Patent 6,434,398 and claims 1-2 of US Patent 6,650,903.

In order to expedite prosecution of this application, enclosed herewith is a Terminal Disclaimer in the form required by 37 CFR 1.321 (b). The Terminal Disclaimer includes a statement by the assignee specifying that the evidentiary documents have been reviewed and certifying that, to the best of the inventor's knowledge and belief, title is in the assignee seeking to take action. As such, the Terminal Disclaimer is submitted to be in compliance with 37 CFR 3.73

(b), and is in the proper form required by 37 CFR 1.321. In view of the same, it is submitted that claims 1-21, 23, 24, and 27 should not be subject to rejection based on obviousness-type double patenting over claims 1-12 of U.S. Patent 6,434,398 and claims 1-2 of US Patent 6,650,903.

Accordingly, reconsideration of the rejection of claims 1-21, 23, 24, and 27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent 6,434,398 and claims 1-2 of US Patent 6,650,903 is respectfully requested.

In view of the terminal disclaimer submitted herewith and the remarks set forth above, it is submitted that the present application is in allowable condition. Reconsideration of the rejection of claims 1 – 27 and their allowance, together with new claim 28, are earnestly solicited.

Respectfully submitted,

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